

**HOUSE . . . . . No. 4934**

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*The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, July 27, 2010.

The committee on Ways and Means to whom was referred the Senate Bill to stabilize neighborhoods (Senate, No. 2407), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4934.

For the committee,

CHARLES A. MURPHY

## The Commonwealth of Massachusetts

### In the Year Two Thousand and Ten

By striking out all after the enacting clause and inserting in place thereof the following:—

1           **SECTION 1.** The second paragraph of subclause (e) of Clause Third of section 5 of  
2 chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by  
3 adding the following sentence:- In any city or town that accepts this paragraph, any real estate  
4 owned by, or held in trust for, a charitable organization for the purpose of creating community  
5 housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired  
6 the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased,  
7 rented or otherwise disposed of, but not for more than 7 years after such purchase.

8           **SECTION 2.** Chapter 167E of the General Laws is hereby amended by inserting after section 7  
9 the following section:-

10 Section 7A. (a) As used in this section the following word shall, unless the context clearly  
11 requires otherwise, have the following meaning:

12           “Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less  
13 than 50 per cent of the area median income, as periodically determined by the United States  
14 Department of Housing and Urban Development; and (2) possesses assets, excluding a primary  
15 residence, valued at less than \$120,000.

16           (b) No mortgagee shall make a reverse mortgage loan pursuant to section 7 to a  
17 mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and  
18 (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written  
19 certification from a counselor with a third-party organization that the mortgagor has received  
20 counseling in person relative to the appropriateness of the loan transaction from the third party  
21 organization and has completed an approved counseling program offered by the third party  
22 organization; provided, however, that the third party organization shall have been approved by  
23 the executive office of elder affairs for purposes of such counseling.

24           (c) A reverse mortgage executed with a borrower that has not received counseling by a third  
25 party approved by the executive office of elder affairs shall render the terms of the reverse  
26 mortgage unenforceable. The commissioner shall adopt regulations to administer and implement  
27 this section.

28           **SECTION 3.** Chapter 171 of the General Laws is hereby amended by inserting after section 65C  
29 the following section:-

30 Section 65C½. (a) As used in this section the following word shall, unless the context clearly  
31 requires otherwise, have the following meaning:

32 “Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less  
33 than 50 per cent of the area median income, as periodically determined by the United States  
34 Department of Housing and Urban Development; and (2) possesses assets, excluding a primary  
35 residence, valued at less than \$120,000.

36 (b) No mortgagee shall make a reverse mortgage loan pursuant to section 65C to a mortgagor  
37 unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and (ii) at or  
38 before the closing of any reverse mortgage loan the mortgagee has received written certification  
39 from a counselor with a third-party organization that the mortgagor has received counseling in  
40 person relative to the appropriateness of the loan transaction from the third party organization  
41 and has completed an approved counseling program offered by the third party organization;  
42 provided, however, that the third party organization shall have been approved by the executive  
43 office of elder affairs for purposes of such counseling.

44 (c) A reverse mortgage executed with a borrower that has not received counseling by a third  
45 party approved by the executive office of elder affairs shall render the terms of the reverse  
46 mortgage unenforceable. The commissioner shall adopt regulations to administer and implement  
47 this section.

48 **SECTION 4.** Chapter 183 of the General Laws is hereby amended by striking out section 67, as  
49 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

50 Section 67. No mortgagee shall make a reverse mortgage loan on residential property except in  
51 accordance with sections 7 and 7A of chapter 167E. For the purposes of this section, the term  
52 “residential property” shall mean a 1-to-4 family dwelling owned and occupied in whole or in  
53 part by the mortgagor and located in the commonwealth.

54 **SECTION 5.** Section 13A of chapter 186 of the General Laws, as appearing in the 2008  
55 Official Edition, is hereby amended by inserting after the word “law”, in line 6, the following  
56 words:- and the foreclosing entity shall assume the lease and rental subsidy contract with the  
57 rental subsidy administrator.

58 **SECTION 6.** The General Laws are hereby amended by inserting after chapter 186, the  
59 following chapter:-

60 CHAPTER 186A.

61 TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

62 Section 1. (a) As used in this chapter, the following words shall, unless the context  
63 clearly requires otherwise, have the following meanings:-

64 “Bona fide lease or bona fide tenancy”, a lease or tenancy shall not be considered bona fide  
65 unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is  
66 not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction.

67 “Entity”, a business organization, or any other kind of organization including, without limitation,  
68 a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint  
69 venture, sole proprietorship or any other category of organization and any employee, agent,  
70 servant or other representative of such entity.

71 “Eviction”, an action, without limitation, by a foreclosing owner of a housing accommodation  
72 which is intended to actually or constructively evict a tenant or otherwise compel a tenant to  
73 vacate such housing accommodation.

74 “Foreclosing owner”, an entity that holds title in any capacity, directly or indirectly, without  
75 limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation  
76 that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest  
77 in the housing accommodation at any point prior to the foreclosure of the housing  
78 accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional  
79 mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing  
80 of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage  
81 Association or the Federal Home Loan Mortgage Corporation.

82 “Foreclosure”, a legal proceeding to terminate a mortgagor's interest in property, instituted by the  
83 mortgagee, and regulated under chapter 244.

84 “Housing accommodation”, a building or structure, or part thereof or land appurtenant thereto,  
85 and any other real or personal property used, rented or offered for rent for living or dwelling  
86 purposes, together with all services connected with the use or occupancy of such property.

87 “Institutional mortgagee”, an entity or an entity which is the subsidiary, parent, trustee or agent  
88 thereof or otherwise related to such entity, that holds or owns mortgages or other security  
89 interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more  
90 mortgages of housing accommodations.

91 “Just cause”, 1 of the following: (1) the tenant has failed to pay the rent in effect prior to the  
92 foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified  
93 the tenant in writing of the amount of rent or the amount of use and occupancy that was to be  
94 paid and to whom it was to be paid; (2) the tenant has materially violated an obligation or  
95 covenant of the tenancy or occupancy, other than the obligation to surrender possession upon  
96 proper notice, and has failed to cure such violation within 30 days after having received written  
97 notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is  
98 permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a  
99 substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or  
100 permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide  
101 lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after  
102 written request or demand by the foreclosing owner, to execute a written extension or renewal  
103 thereof for a further term of like duration and in such terms that are not inconsistent with this  
104 chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the  
105 purpose of making necessary repairs or improvement required by the laws of the United States,  
106 the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or  
107 required by agreement or by law or for the purpose of showing the unit to a prospective

108 purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party  
109 owner to evict a tenant at the expiration of an existing lease.

110 “Mortgagee”, an entity to whom property is mortgaged, the mortgage creditor or lender  
111 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,  
112 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee’s  
113 rights, interests or obligations under the mortgage agreement.

114 “Mortgage servicer”, an entity which administers or at any point administered the mortgage;  
115 provided, however that such administration shall include, but not be limited to, calculating  
116 principal and interest, collecting payments from the mortgagor, acting as escrow agent or  
117 foreclosing in the event of a default.

118 “Tenant”, a person or group of persons who at the time of foreclosure is entitled to occupy a  
119 housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will. A person  
120 who moves into the housing accommodation owned by the foreclosing owner, subsequent to the  
121 foreclosure sale, without the express written permission of the foreclosing owner shall not be  
122 considered a tenant under this chapter.

123 “Unit” or “residential unit”, the room or group of rooms within a housing accommodation which  
124 is used or intended for use as a residence by 1 household.

125 Section 2. Notwithstanding any general or special law to the contrary, a foreclosing  
126 owner shall not evict a tenant except for just cause or unless a binding purchase and sale  
127 agreement has been executed for a bona fide third party to purchase the housing accommodation  
128 from a foreclosing owner.

129 Section 3. Within 30 days of the foreclosure, the foreclosing owner shall post in a prominent  
130 location in the building in which the rental housing unit is located a written notice stating the  
131 names, addresses, telephone numbers and telephone contact information of the foreclosing  
132 owner, the building manager or other representative of the foreclosing owner responsible for the  
133 management of such building and stating the address to which rent and use and occupancy  
134 charges shall be sent.

135 A foreclosing owner shall not evict a tenant for actions that constitute just cause unless the  
136 foreclosing owner has delivered to each tenant at the time of delivery of written notice pursuant  
137 to this section, a written disclosure of the tenant’s right to a court hearing prior to eviction.

138 Section 4. (a) A foreclosing owner shall not evict a tenant for the following actions that  
139 constitute just cause until 30 days after the notice required by section 3 is posted and delivered:  
140 (i) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and  
141 occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount  
142 of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid;  
143 (ii) the tenant has materially violated an obligation or covenant of the tenancy or occupancy,  
144 other than the obligation to surrender possession upon proper notice, and has failed to cure such  
145 violation within 30 days after having received written notice thereof from the foreclosing owner;  
146 and (iii) the tenant who had a written bona fide lease or other rental agreement which terminated,  
147 on or after August 10, 2010, has refused, after written request or demand by the foreclosing

148 owner, to execute a written extension or renewal thereof for a further term of like duration and in  
149 such terms that are not inconsistent with this chapter.

150 (b) A foreclosing owner shall not evict a tenant for the following actions that constitute just  
151 cause until the notice required by section 3 is posted and delivered: (i) the tenant is committing a  
152 nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to  
153 the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (ii)  
154 the tenant is using or permitting the unit to be used for any illegal purpose; and (iii) the tenant  
155 has refused the foreclosing owner reasonable access to the unit for the purpose of making  
156 necessary repairs or improvement required by the laws of the United States, the commonwealth  
157 or any subdivision thereof, or for the purpose of inspection as permitted or required by  
158 agreement or by law or for the purpose of showing the unit to a prospective purchaser or  
159 mortgagee provided.

160 Section 5. If a foreclosing owner disagrees with the amount of rent or use and occupancy  
161 rates that a tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may  
162 bring a claim in district or superior court or the housing court to claim that the rent is  
163 unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed-  
164 upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be  
165 presumed reasonable.

166 Section 6. A foreclosing owner that evicts a tenant in violation of this chapter or any  
167 ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than  
168 \$5,000. Each such illegal eviction shall constitute a separate offense.

169 The district and superior courts and the housing court shall have jurisdiction over an  
170 action arising from a violation of this chapter or of any ordinance or by-law adopted pursuant to  
171 this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a  
172 defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in  
173 violation of this chapter or any ordinance or by-law adopted pursuant to this chapter.

174 **SECTION 7.** Chapter 244 of the General Laws, as appearing in the 2008 Official Edition, is  
175 hereby amended by striking out section 35A and inserting in place thereof the following section:-

176 Section 35A. (a). As used in this section, the following words shall, unless the context clearly  
177 requires otherwise, have the following meanings:

178 “Borrower”, a mortgagor of a mortgage loan.

179 “Borrower’s representative”, an employee or contractor of a non-profit organization  
180 certified by Housing and Urban Development, an employee or contractor of a foreclosure  
181 education center pursuant to section 16 of chapter 206 of the acts of 2007 or an employee or  
182 contractor of a counseling agency receiving a Collaborative Seal of Approval from the  
183 Massachusetts Homeownership Collaborative administered by the Citizens’ Housing and  
184 Planning Association.

185 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly,  
186 or in a nominee capacity, a mortgage loan securing a residential property, including, without  
187 limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder,

188 Mortgage Electronic Registration System or mortgage servicer, including the Federal National  
189 Mortgage Association or the Federal Home Loan Mortgage Corporation. "Creditor" shall also  
190 include any servant, employee or agent of a creditor.

191 "Creditor's representative", a person who has the authority to negotiate the terms of and  
192 modify a mortgage loan.

193 "Modified mortgage loan", a mortgage modified from its original terms including, but not  
194 limited to, a loan modified pursuant to 1 of the following: (i) the Home Affordable Modification  
195 Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) any  
196 modification program that a lender uses which is based on accepted principles and the safety and  
197 soundness of the institution and recognized by the National Credit Union Administration, the  
198 Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing  
199 Agency; or (v) a similar federal refinance plan.

200 "Mortgage loan", a loan to a natural person made primarily for personal, family or  
201 household purposes secured wholly or partially by a mortgage on residential property.

202 "Net present value", the present net value of a residential property based on a calculation  
203 using 1 of the following: (i) the federal Home Affordable Modification Program Base Net  
204 Present Value Model, (ii) the Federal Deposit Insurance Corporation's Loan Modification  
205 Program; or (iii) for the Massachusetts Housing Finance Agency's loan program used solely by  
206 the agency to compare the expected economic outcome of a loan with or without a loan  
207 modification.

208 "Residential property", real property located in the commonwealth having thereon a  
209 dwelling house with accommodations for 4 or less separate households and occupied, or to be  
210 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that  
211 residential property shall be limited to the principal residence of a person; provided further, that  
212 residential property shall not include an investment property or residence other than a primary  
213 residence; and provided further, that residential property shall not include residential property  
214 taken in whole or in part as collateral for a commercial loan.

215 (b) A mortgagor of residential property shall have a 150-day right to cure a default of a required  
216 payment as provided in the residential mortgage or note secured by the residential property by  
217 full payment of all amounts that are due without acceleration of the maturity of the unpaid  
218 balance of the mortgage; provided, however, that if a creditor certifies that: (i) it has engaged in a  
219 good faith effort to negotiate a commercially reasonable alternative to foreclosure as described in  
220 subsection (c); (ii) its good faith effort has involved at least 1 meeting, either in person or by  
221 telephone, between a creditor's representative and the borrower, the borrower's attorney or the  
222 borrower's representative; and (iii) after such meeting the borrower and the creditor were not  
223 successful in resolving their dispute, then the creditor may begin foreclosure proceedings after a  
224 right to cure period lasting 90 days. A borrower who fails to respond within 30 days to any  
225 mailed communications offering to negotiate a commercially reasonable alternative to  
226 foreclosure sent via certified and first class mail or similar service by a private carrier from the  
227 lender shall be deemed to have forfeited the right to a 150-day right to cure period and shall be  
228 subject to a right to cure period lasting 90 days. The right to cure a default of a required payment  
229 shall be granted once during any 3 year period, regardless of mortgage holder.

230 (c) For purposes of this section, a determination that a creditor has made a good faith effort to  
231 negotiate and agree upon a commercially reasonable alternative to foreclosure shall mean that  
232 the creditor has considered: (i) an assessment of the borrower's current circumstances including,  
233 without limitation, the borrower's current income, debts and obligations; (ii) the net present  
234 value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated  
235 net recovery following foreclosure; and (iii) the interests of the creditor; provided, however, that  
236 nothing in this subsection shall be construed as prohibiting a creditor from considering other  
237 factors; provided, further, that the creditor shall provide by first class and certified mail or  
238 similar service by a private carrier to a borrower documentation of good faith effort 10 days prior  
239 to meeting, telephone conversation or a meeting pursuant to subsection (b)

240 (d) A borrower who receives a loan modification offer from the creditor resulting from the  
241 lender's good faith effort to negotiate and agree upon a commercially reasonable alternative to  
242 foreclosure shall respond within 30 days of receipt of first class or certified mail. A borrower  
243 shall be presumed to have responded if the borrower provides: (i) confirmation of a facsimile  
244 transmission to the creditor; (ii) proof of delivery through the United States Postal Service or  
245 similar carrier; or (iii) record of telephone call to the creditor captured on a telephone bill or pin  
246 register. A borrower who fails to respond to the creditor's offer within 30 days of receipt of a  
247 loan modification offer shall be deemed to have forfeited the 150-day right to cure period and  
248 shall be subject to a right to cure period lasting 90 days.

249 (e) Nothing in this subsection shall prevent a creditor from offering or accepting  
250 alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower  
251 requests such alternatives, rejects a loan modification offered pursuant to this subsection or does  
252 not qualify for a loan modification pursuant to this subsection.

253 (f) A creditor that chooses to begin foreclosure proceedings after a right to cure period lasting  
254 less than 150 days that engaged in a good faith effort to negotiate and agree upon a commercially  
255 reasonable alternative but was not successful in resolving the dispute shall certify compliance  
256 with this section in an affidavit. The affidavit shall include the time and place of the meeting,  
257 parties participating, relief offered to the borrower, a summary of the creditor's net present value  
258 analysis and applicable inputs of the analysis and certification that any modification or option  
259 offered complies with current federal law or policy. A creditor shall provide a copy of the  
260 affidavit to the homeowner and file a copy of the affidavit with the land court in advance of the  
261 foreclosure.

262 (g) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid  
263 balance of such mortgage obligation or otherwise enforce the mortgage because of a default  
264 consisting of the mortgagor's failure to make any such payment in subsection (b) by any method  
265 authorized by this chapter or any other law until at least 150 days after the date a written notice is  
266 given by the mortgagee to the mortgagor; provided, however, that a creditor meeting the  
267 requirements of subsection (b) that chooses to begin foreclosure proceedings after a right to cure  
268 period lasting less than 150 days may accelerate maturity of the unpaid balance of such mortgage  
269 obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's  
270 failure to make any such payment in subsection (b) by any method authorized by this chapter or  
271 any other law not less than 91 days after the date a written notice is given by the creditor to the  
272 mortgagor.

273 Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the  
274 mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a private  
275 carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone  
276 holding thereunder.

277 (h) The notice required in subsection (g) shall inform the mortgagor of the following:-

278 (1) the nature of the default claimed on such mortgage of residential real property and of the  
279 mortgagor's right to cure the default by paying the sum of money required to cure the default;

280 (2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or  
281 other action to seize the home, which date shall not be less than 150 days after service of the  
282 notice and the name, address and local or toll free telephone number of a person to whom the  
283 payment or tender shall be made unless a creditor chooses to begin foreclosure proceedings after  
284 a right to cure period lasting less than 150 days that engaged in a good faith effort to negotiate  
285 and agree upon a commercially reasonable alternative but was not successful in resolving the  
286 dispute, in which case a foreclosure or other action to seize the home may take place on an  
287 earlier date to be specified;

288 (3) that, if the mortgagor does not cure the default by the date specified, the mortgagee, or  
289 anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the  
290 property by a foreclosure proceeding or other action to seize the home;

291 (4) the name and address of the mortgagee, or anyone holding thereunder, and the telephone  
292 number of a representative of the mortgagee whom the mortgagor may contact if the mortgagor  
293 disagrees with the mortgagee's assertion that a default has occurred or the correctness of the  
294 mortgagee's calculation of the amount required to cure the default;

295 (5) the name of any current and former mortgage broker or mortgage loan originator for such  
296 mortgage or note securing the residential property;

297 (6) that the mortgagor may be eligible for assistance from the Homeownership Preservation  
298 Foundation or other foreclosure counseling agency, and the local or toll free telephone numbers  
299 the mortgagor may call to request this assistance;

300 (7) that the mortgagor may sell the property prior to the foreclosure sale and use the proceeds to  
301 pay off the mortgage;

302 (8) that the mortgagor may redeem the property by paying the total amount due, prior to the  
303 foreclosure sale;

304 (9) that the mortgagor may be evicted from the home after a foreclosure sale; and

305 (10) the mortgagor may have the following additional rights, depending on the terms of the  
306 residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully repay  
307 the residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential mortgage  
308 lender in lieu of foreclosure.

309 The notice shall also include a declaration, in the language the creditor has regularly used in its  
310 communication with the borrower, appearing on the first page of the notice stating: "This is an  
311 important notice concerning your right to live in your home. Have it translated at once."

312 The division of banks shall adopt regulations in accordance with this subsection.

313 (i) To cure a default prior to acceleration under this section, a mortgagor shall not be  
314 required to pay any charge, fee or penalty attributable to the exercise of the right to cure a  
315 default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and  
316 per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees  
317 relating to the mortgagor's default that are incurred by the mortgagee or anyone holding  
318 thereunder prior to or during the period set forth in the notice required by this section. The  
319 mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after  
320 the 150-day notice to cure has ended.

321 (j) A copy of the notice required by this section and an affidavit demonstrating  
322 compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in  
323 any action or proceeding to foreclose on such residential real property.

324 (k) A copy of the notice required by this section shall also be filed by the mortgagee, or  
325 anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the  
326 residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or  
327 anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of  
328 the date of the foreclosure sale and the purchase price obtained at the sale.

329 **SECTION 8.** Chapter 244 of the General Laws is hereby amended by striking out section 35A,  
330 as appearing in section 7, and inserting in place thereof the following section:-

331 Section 35A. (a) Any mortgagor of residential real property located in the commonwealth, shall  
332 have a 90-day right to cure a default of a required payment as provided in such residential  
333 mortgage or note secured by such residential real property by full payment of all amounts that  
334 are due without acceleration of the maturity of the unpaid balance of such mortgage. The right to  
335 cure a default of a required payment shall be granted once during any 5-year period, regardless  
336 of the mortgage holder. For the purposes of this section, "residential property", shall mean real  
337 property located in the commonwealth having thereon a dwelling house with accommodations  
338 for 4 or less separate households and occupied, or to be occupied, in whole or in part by the  
339 mortgagor; provided, however, that residential property shall be limited to the principal residence  
340 of a person; provided further, that residential property shall not include an investment property or  
341 residence other than a primary residence; and provided further, that residential property shall not  
342 include residential property taken in whole or in part as collateral for a commercial loan.

343 (b) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the  
344 unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a  
345 default consisting of the mortgagor's failure to make any such payment in subsection (a) by any  
346 method authorized by this chapter or any other law until at least 90 days after the date a written  
347 notice is given by the mortgagee to the mortgagor.

348 Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand  
349 to the mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a

350 private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or  
351 anyone holding thereunder.

352 (c) The notice required in subsection (b) shall inform the mortgagor of the following:-

353 (1) the nature of the default claimed on such mortgage of residential real property and of the  
354 mortgagor's right to cure the default by paying the sum of money required to cure the default;

355 (2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or  
356 other action to seize the home, which date shall not be less than 90 days after service of the  
357 notice and the name, address and local or toll free telephone number of a person to whom the  
358 payment or tender shall be made;

359 (3) that, if the mortgagor does not cure the default by the date specified, the mortgagee, or  
360 anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the  
361 property by a foreclosure proceeding or other action to seize the home;

362 (4) the name and address of the mortgagee, or anyone holding thereunder, and the telephone  
363 number of a representative of the mortgagee whom the mortgagor may contact if the mortgagor  
364 disagrees with the mortgagee's assertion that a default has occurred or the correctness of the  
365 mortgagee's calculation of the amount required to cure the default;

366 (5) the name of any current and former mortgage broker or mortgage loan originator for such  
367 mortgage or note securing the residential property;

368 (6) that the mortgagor may be eligible for assistance from the Massachusetts Housing Finance  
369 Agency and the division of banks and the local or toll free telephone numbers the mortgagor may  
370 call to request this assistance;

371 (7) that the mortgagor may sell the property prior to the foreclosure sale and use the proceeds to  
372 pay off the mortgage;

373 (8) that the mortgagor may redeem the property by paying the total amount due, prior to the  
374 foreclosure sale;

375 (9) that the mortgagor may be evicted from the home after a foreclosure sale; and

376 (10) the mortgagor may have the following additional rights, depending on the terms of the  
377 residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully repay  
378 the residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential mortgage  
379 lender in lieu of foreclosure.

380 The notice shall also include a declaration, appearing on the first page of the notice stating: "This  
381 is an important notice concerning your right to live in your home. Have it translated at once."

382 The division of banks shall adopt regulations in accordance with this subsection..

383 (d) To cure a default prior to acceleration under this section, a mortgagor shall not be required to  
384 pay any charge, fee, or penalty attributable to the exercise of the right to cure a default. The  
385 mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem

386 interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to  
387 the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to  
388 or during the period set forth in the notice required by this section. The mortgagee, or anyone  
389 holding thereunder, may also provide for reinstatement of the note after the 90 day notice to cure  
390 has ended.

391 (e) A copy of the notice required by this section and an affidavit demonstrating  
392 compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in  
393 any action or proceeding to foreclose on such residential real property.

394 (f) A copy of the notice required by this section shall also be filed by the mortgagee, or  
395 anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the  
396 residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or  
397 anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of  
398 the date of the foreclosure sale and the purchase price obtained at the sale.

399 **SECTION 9.** Section 33 of chapter 266 of the General Laws, as appearing in the 2008 Official  
400 Edition, is hereby amended by striking out, in lines 5 to 10, inclusive, the words “(2) whoever,  
401 with intent to defraud, by a false statement in writing respecting the financial condition, or means  
402 or ability to pay, of himself or of any other person, obtains credit from any bank or trust  
403 company or any banking institution or any retail seller of goods or services accustomed to give  
404 credit in any form whatsoever shall be guilty of larceny” and inserting in place thereof the  
405 following words:- (2) whoever, with intent to defraud, by a false statement in writing respecting  
406 the financial condition, or means or ability to pay, of himself or of any other person, obtains for  
407 himself or for any other person credit from any bank or trust company or any banking institution  
408 or any mortgage lender, as defined in section 1 of chapter 255E, or any retail seller of goods or  
409 services accustomed to give credit in any form whatsoever shall be guilty of larceny.

410 **SECTION 10.** Said chapter 266 is hereby further amended by striking out section 34, as so  
411 appearing, and inserting in place thereof the following section:--

412 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with  
413 property of any kind or with any of the benefits described in sections 33 and 33A shall be guilty  
414 of larceny.

415 **SECTION 11.** Said chapter 266 is hereby further amended by inserting after section 35 the  
416 following section:-

417 Section 35A. (a) As used in this section, the following words shall have the following meanings,  
418 unless the context clearly otherwise requires:--

419 “Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or  
420 compensation in any form.

421 “Material omission”, the omission or concealment of a material fact necessary to prevent  
422 a statement from being misleading, in the light of the circumstances under which the statement is  
423 made.

424 “Mortgage lending process”, the process through which a person seeks or obtains a  
425 residential mortgage loan including, but not limited to, solicitation, application, origination,  
426 negotiation of terms, third-party provider services, underwriting, signing and closing, and  
427 funding of the loan; provided, however, that documents involved in the mortgage lending  
428 process shall include, but not be limited to, uniform residential loan applications or other loan  
429 applications, appraisal reports, HUD-1 settlement statements, supporting personal documentation  
430 for loan applications such as W-2 forms, verification of income and employment, bank  
431 statements, tax returns and payroll stubs and any required disclosures.

432 “Pattern of residential mortgage fraud”, violation of subsection (b) in connection with 3  
433 or more residential properties.

434 “Person”, a natural person, corporation, company, limited liability company, partnership,  
435 real estate trust, association or any other entity.

436 “Residential mortgage loan”, a loan or agreement to extend credit made to a person,  
437 which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other  
438 document representing a security interest or lien upon any interest in a 1-to4-family residential  
439 property located in the commonwealth, including the renewal or refinancing of any such loan.

440 (b) Whoever intentionally: (1) makes or causes to be made any material statement that is false or  
441 any statement that contains a material omission, knowing the same to be false or to contain a  
442 material omission, during or in connection with the mortgage lending process, with the intent  
443 that such statement be relied upon by a mortgage lender, borrower or any other party to the  
444 mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or  
445 any statement that contains a material omission, knowing the same to be false or to contain a  
446 material omission, during or in connection with the mortgage lending process, with the intent  
447 that such statement be relied upon by a mortgage lender, borrower or any other party to the  
448 mortgage lending process; (3) receives any proceeds or any other funds in connection with a  
449 residential mortgage closing, knowing such proceeds or funds were obtained in violation of  
450 clause (1) or (2); or (4) files or causes to be filed with a registrar of deeds any document that  
451 contains a material statement that is false or a material omission, knowing such document to  
452 contain a material statement that is false or a material omission, shall be punished by  
453 imprisonment in the state prison for not more than 5 years or by imprisonment in the house of  
454 correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a  
455 natural person or not more than \$100,000 in the case of any other person, or by both such fine  
456 and imprisonment.

457 Any person who engages in a pattern of residential mortgage fraud shall be punished by  
458 imprisonment in the state prison for not more than 15 years or by a fine of not more than  
459 \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other  
460 person, or by both such fine and imprisonment.

461 (c) If a defendant is convicted of a violation of this section as a result of conduct or an omission  
462 by an employee or agent of the defendant the court may consider the following mitigating factors  
463 with respect to sentencing:

464 (1) that the defendant had instituted and maintained at the time of the violation, and continues to  
465 have, a written policy including:

466 (i) a prohibition against conduct that violates this section by employees and agents of the  
467 defendant;

468 (ii) penalties or discipline for violation of the policy;

469 (iii) a process for educating employees and agents concerning the policy and consequences of a  
470 violation thereof; and

471 (iv) with respect to a defendant authorized to conduct criminal history checks for the employee's  
472 or agent's position, a requirement for a criminal history check before employing an employee or  
473 engaging an agent and a requirement that the defendant will not employ or engage an individual  
474 who has been convicted of a crime involving fraud;

475 (2) a demonstration that the defendant enforces the policy described in clause (1); and

476 (3) prior to the violation of this section the defendant provided a copy of the policy described in  
477 clause (1), including a description of the consequences for violating the policy, to the employee  
478 or agent who committed the violation.

479 **SECTION 12.** Chapter 277 of the General Laws is hereby amended by inserting after  
480 section 62B the following section:-

481 Section 62C. A violation of section 35A of chapter 266 may be prosecuted and punished in:

482 (1) the county in which the residential property for which a mortgage loan is being sought is  
483 located;

484 (2) the county in which any act was performed in furtherance of the violation;

485 (3) the county in which any person alleged to have violated this section had control or possession  
486 of any proceeds of, or other funds received as a result of the violation;

487 (4) the county in which a closing on the mortgage loan occurred; or

488 (5) the county in which a document containing a deliberate misstatement, misrepresentation or  
489 omission is filed with a registrar of deeds.

490 **SECTION 13.** Section 4 shall take effect 90 days after the effective date of this act. Sections 2  
491 and 3 shall take effect 90 days after the effective date of this act; provided, however, that the in-  
492 person counseling requirement in subsection (b) of section 7A of chapter 167E of the General  
493 Laws and in subsection (b) of section 65C½ of chapter 171 of the General Laws shall take effect  
494 24 months after the effective date of this act.

495 **SECTION 14.** Section 8 shall take effect on January 1, 2016.